CHANNEL DOCTORS

Compliance News for Customer People

December 2020

The Quality Street's all gone. So read this!

Short of time? Here are this edition's Headlines:

- Brexit Data - Not a No Deal, but Not Yet a Deal. Ok?
- Pensions, Mortgage and Claim Management firms all hit with ICO fines for illegal marketing
- Twitter gets a slap on the wrist from Dublin, but Paris guns for Amazon and Google (again)
- Fine-dodging Australian banned from doing something he doesn't want to do by the Insolvency Service
- Death is pricey as well as grim says CMA
- Klarna's "mood boosting" social ads banned by the ASA
- The opaque world of adtech and programmatic advertising snares charities and exposes their supporters

Ok, I know it's now January, not December, but there was a lot of news in the past month and it seemed best to save it until the lull between another discussion about whether Home Bargains counts an essential retailer and the first work Zoom call of the New Year...

Welcome to our 18th newsletter:

It's a Deal. And No Deal. Is That Clear?

So after a lot of late nights, fish brinkmanship, contradictory press briefings and excitable commentary, the UK & EU agreed a trade deal before Christmas, But somehow still decided to kick the data protection 'adequacy' decision into the long grass, with a delay of up to 6 months.

How does that work? Well, we try and explain here.

And what to do in the meantime?

1. Keep reading this Newsletter (of course!)

2. Continue to minimise the personal data you hold

3. Enter into negotiations with your lawyers just in case you do need to cough up your share of £1.6bn for new and amended contracts in the event of no 'adequacy' decision...

ICO's Pre-Christmas Flurry of Marketing Fines

The ICO has fined Pension House Exchange Limited – which traded as Pension Partner - £45,000 for making 39,722 live marketing calls offering to track down 'frozen' or 'lost' personal pensions. Making unsolicited marketing calls about pensions was made illegal a couple of years ago through regulation 21B of PECR (Privacy & Electronic Communications Regulations).

The ICO was alerted to Pension House Exchange by the FCA after an FCA-regulated firm reported its activities to them. Not the first time ICO enforcement action has been triggered by reports from another regulator.

OSL Financial Consultancy – trading as MortageKey – has been fined £50,000 for sending 174,342 nuisance marketing texts without consent. The emails – about buy to let mortgages – were sent to people who had previously requested quotes via the MortgageKey website, but not opted in to future marketing (or given the option to not do so).

The ICO has presented this as part of its clampdown on rogue marketers exploiting Covid and its press release pointed out that over 50,000 of the emails were sent since the arrival of Covid in the spring, but it's not really at all clear how MortgageKey's emails are anything to do with Covid – just old fashioned non-compliant SMS marketing.

Reliance Advisory

The ICO has fined claims management (PPI) lead generator Reliance Advisory [£250,000](#) for attempting over 15 million live calls – less than 10% of which were connected – to consumers who had not given their consent. Reliance's accounts are overdue at Companies House so only an optimist would expect them to pay the fine.

Pownall Marketing, like Reliance, was also involved in the claims management sector – in its case, outbound calling consumers claiming they could get compensation for car accidents. The ICO has identified that Pownall made 350,000 calls without any consent, using over 60 calling numbers, apparently for an Indian-based firm. Pownall attempted to fold the company as the ICO's investigation reached its conclusion, but the ICO has stepped in with Companies House to stop that happening as it pursues a £250,000 fine.

Post-Brexit Data Protection News from Abroad

Elsewhere the Irish Data Protection Commission (DPC) has fined Twitter a quite modest €450,000 for its 2019 data breach, in which private tweets were mistakenly made public. The Irish regulator is the EU lead regulator responsible for Twitter and most of the other big tech platforms because their European legal bases are in Ireland for tax purposes. The DPC has a backlog of 20 other investigations of big tech firms to work its way through, too.

Google and Amazon's European operations are also headquartered in Ireland, but that hasn't stopped the feisty French DP regulator the CNIL from fining them €100m and €35m respectively for placing advertising cooking on consumers' devices without their consent (which is a large part of their business model, I thought).

The Italian Data Protection Authority (Garante per la protezione dei dati personali) has fined Vodafone Italy €12m for a series of telemarketing breaches, including the use of misleading CLIs (calling numbers) and incorrectly permissioned third party prospect data lists.

The Insolvency Service has imposed a 6 year ban on Elia Bols from acting as a company director. Mr Bols ran AMS Marketing Limited which was fined £100,000 by the ICO for making unsolicited marketing calls, but never paid up. Bols is an Australian who is now back home in Perth, so he's probably not too concerned.

FCA's Barclays Fine Points the Way to its Covid Thinking

The FCA has fined Barclays £26m for it - and subsidiary Clydesdale's - failures to support customers in difficulty or arrears. Between 2014 and 2018 Barclays

* failed to follow its customers' contact policies for customers who fell into arrears
* failed to have appropriate conversations with customers to help understand the reasons for the arrears
* failed to properly understand customers' circumstances leading it to offer unaffordable, or unsustainable, forbearance solutions

Although this is an historic case, it points to the FCA's thinking about its heightened expectations of firms to "exercise forbearance and due consideration for consumers in arrears or suffering financial difficulties" during the current period of Covid disruption.

CMA
Competition & Markets Authority

The CMA has finalised its investigation into the funeral market. And grim reading it makes.
Some of the changes it recommends include:

- an obligation for all funeral directors and crematorium operators to disclose prices in a manner that will help customers make more informed decisions;
- that information must be provided in advance of a customer committing to purchase a service so that people know the price they will be charged and the key terms of business – for example if a deposit is required;
- that customers should be made aware of any relevant business, financial and commercial interests of the funeral director, and that certain practices – such as payments which may incentivise hospitals, care homes or hospices to refer customers to a particular funeral director – will be prohibited;
- a recommendation to government to establish an independent inspection and registration regime to monitor the quality of funeral director services as a first step in the establishment of a broader regulatory regime for funeral services

The ASA generated an unusual amount of publicity before Christmas when it banned Klarna's re-use of Instagram influencers' adverts which suggested that buying online now, and paying later via Klarna would "boost" or "lift" consumers' mood.
You see, it's not all beautiful Swedes, clever digital techniques, massive losses and astronomic valuations - there's also emotional exploitation and the 18.9% APR!

This month's failed energy supplier is Yorkshire Energy (which also traded as Daisy Energy), whose 74,000 customers have been transferred to Scottish Power.

A quiet month in the 'customer' space for **Ofcom**.and **Ofwat.**

Nothing of note from the Fundraising Regulator this month.


FINANCIAL TIMES

HOME WORLD UK COMPANIES TECH MARKETS CLIMATE OPINION WORK & CAREERS LIFE & ARTS HOW TO SPEND IT

Latest on Data protection

US student data left unsecured by Get Schooled

Facebook to put UK data under US purview after Brexit

Twitter fined €450,000 by Irish data regulator

The Federal Trade Commission strikes back against Facebook

Data protection

Some UK charities are sharing sensitive data with advertisers, say academics

Privacy activists also voice concern about information on potentially vulnerable people being used

Nor has it commented on an [open letter](#) from a number of academics published on the [ProPrivacy](#) website about the charity sectors' involvement in harvesting supporters' and enquirers' personal data to target programmatic advertising.
In fairness to the charities, they are probably no different to many private sector organisations in their deployment of 3rd party trackers on their websites - if, indeed, they are even aware of them. But the fact that visiting a charity's website may reveal a lot about an individuals' personal, medical or social vulnerabilities is especially concerning.
Another illustration of why the ICO's unwillingness to tackle the apparent non-compliance in the AdTech market is quite mysterious.

The Small Print

This content is accurate as of 31st December 2020.

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